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**A-1 Roofing Company, Inc. and Local Union No. 221 of the United Union of Roofers, Waterproofers and Allied Workers (AFL-CIO).
Cases 37-CA-3888 and 37-CA-3890**

January 27, 1995

DECISION AND ORDER

BY CHAIRMAN GOULD AND MEMBERS STEPHENS
AND COHEN

Upon a charge filed by the Union on June 14, 1994, in Case 37-CA-3888, and on June 17, 1994, in Case 37-CA-3890, the General Counsel of the National Labor Relations Board issued an order consolidating cases, and consolidated complaint on July 26, 1994, and a first amended order consolidating cases and consolidated complaint (first amended complaint) on October 3, 1994, against A-1 Roofing Company, Inc., the Respondent, alleging that it has violated Section 8(a)(5) and (1) of the National Labor Relations Act. Although properly served copies of the charges and consolidated complaint and first amended complaint, the Respondent failed to file an answer.

On December 2, 1994, the General Counsel filed a Motion for Summary Judgment with the Board. On December 14, 1994, the Board issued an order transferring the proceeding to the Board and a Notice to Show Cause why the motion should not be granted. The Respondent filed no response. The allegations in the motion are therefore undisputed.

The National Labor Relations Board has delegated its authority in this proceeding to a three-member panel.

Ruling on Motion for Summary Judgment

Sections 102.20 and 102.21 of the Board's Rules and Regulations provide that the allegations in the complaint shall be deemed admitted if an answer is not filed within 14 days from service of the complaint, unless good cause is shown. In addition, the first amended complaint affirmatively notes that unless an answer is filed within 14 days of service, all the allegations in the first amended complaint will be considered admitted. Further, the undisputed allegations in the Motion for Summary Judgment disclose that the Region, by letter dated October 25, 1994, notified the Respondent that unless an answer were received by November 1, 1994, a Motion for Summary Judgment would be filed.

In the absence of good cause being shown for the failure to file a timely answer, we grant the General Counsel's Motion for Summary Judgment.

On the entire record, the Board makes the following

FINDINGS OF FACT

I. JURISDICTION

The Respondent, a corporation, with an office and place of business in Honolulu, Hawaii, has been engaged in the construction industry in the State of Hawaii. During the 12-month period preceding issuance of the complaint, the Respondent, in conducting its operations, purchased and received at its Honolulu, Hawaii facility, goods valued in excess of \$50,000 from other enterprises located within the State of Hawaii, each of which other enterprises had received these goods directly from points outside the State of Hawaii. We find that the Respondent is an employer engaged in commerce within the meaning of Section 2(2), (6), and (7) of the Act and that the Union is a labor organization within the meaning of Section 2(5) of the Act.

II. ALLEGED UNFAIR LABOR PRACTICES

The following employees of the Respondent constitute a unit appropriate for the purposes of collective bargaining within the meaning of Section 9(b) of the Act:

All those employees of the Respondent covered under the terms of the collective-bargaining agreement by and between the Union and the Hawaii Roofing Contractors Association effective November 1, 1992, through November 2, 1997, excluding guards and supervisors as defined in the Act.

Since about 1976, and at all material times herein, the Union has been the limited exclusive collective-bargaining representative of the unit and since about 1976 has been recognized as such representative by the Respondent. This recognition has been embodied in successive collective-bargaining agreements, the most recent of which is effective by its terms from November 1, 1992, through November 2, 1997. At all material times since about 1976, the Union, by virtue of Section 9(a) of the Act, has been, and is, the exclusive representative of the unit for the purposes of collective bargaining regarding rates of pay, wages, hours of employment, and other terms and conditions of employment.¹

At all material times herein, the Respondent has been signatory to a collective-bargaining agreement by

¹ The complaint's commerce data and unit description suggest that the Respondent is a construction industry employer subject to the provisions of Sec. 8(f) of the Act. Accordingly, in the absence of an allegation that the bargaining relationship was actually based on 9(a) majority support, we find that the relationship was entered into pursuant to Sec. 8(f), and that the Union is therefore the limited 9(a) representative of the unit employees for the period covered by the contract. See *Electri-Tech, Inc.*, 306 NLRB 707 fn. 2 (1992) (citing *John Deklewa & Sons*, 282 NLRB 1375 (1987), *enfd. sub nom. Iron Workers Local 3 v. NLRB*, 843 F.2d 770 (3d Cir. 1988)).

and between the Union and the Hawaii Roofing Contractors Association, the most recent effective by its terms from November 1, 1992, through November 2, 1997, which contains provisions requiring that the Respondent make periodic contributions to various trust funds, as follows:

- (i) Section 14, Roofers Local 221 Health and Welfare Fund
- (ii) Section 15, Roofers Local 221 Pension Fund
- (iii) Section 16, Roofers Local 221 Annuity Fund
- (iv) Section 17, Roofers Local 221 Vacation and Holiday Fund
- (v) Section 17(a), Roofers Local 221 Vacation and Holiday Administration Account
- (vi) Section 18, Joint Apprenticeship and Training Fund.

Section 4(a) of the collective-bargaining agreement provides that the Respondent is to remit to the Union on a periodic basis union dues and fees that have been deducted from wages pursuant to receipt of proper authorizations from employees. Section 19 of the collective-bargaining agreement provides that the Respondent is to pay liquidated damages of 10 percent of any delinquent payment made to the various funds listed above.

The Respondent has failed and refused to make contributions to the various trust funds for the months of January through June 1994, in the amount of \$138,222.27. The Respondent has failed and refused to remit union dues and fees for the months of January through June 1994, in the amount of \$23,591.29. The Respondent has failed and refused to remit payment for the 10-percent liquidated damages that it owes for its delinquent trust fund contributions for the months of January through June 1994, in the amount of \$13,557.98. The Respondent has also failed and refused to pay employee wages, pursuant to the collective-bargaining agreement, subsections 9 (Wage Rates), 10 (Pay Day), 11 (Hours and Overtime), and 12 (Showup Pay and/or Work), for the period May 31 through June 1, 1994, in the amount of \$35,247.80.

The foregoing subjects relate to wages, hours, and other terms and conditions of employment of the unit and are mandatory subjects for the purposes of collective bargaining. The Respondent engaged in this conduct without prior notice to the Union, without the consent of the Union, and without having afforded the Union an opportunity to negotiate and bargain as the limited exclusive representative of the Respondent's employees regarding such acts and conduct.

CONCLUSION OF LAW

By the acts and conduct described above, the Respondent has failed and refused, and is failing and refusing to bargain collectively and in good faith with the limited exclusive collective-bargaining representative of its employees, and has thereby engaged in unfair labor practices affecting commerce within the meaning of Section 8(a)(5) and (1) and Section 2(6) and (7) of the Act.

REMEDY

Having found that the Respondent has engaged in certain unfair labor practices, we shall order it to cease and desist and to take certain affirmative action designed to effectuate the policies of the Act. Specifically, having found that the Respondent has violated Section 8(a)(5) and (1) by failing to make contractually required contributions to the various trust funds for the months of January through June 1994, and by failing to pay liquidated damages thereon, we shall order the Respondent to make whole its unit employees by making all such delinquent contributions and paying all liquidated damages due, including any additional amounts due the funds in accordance with *Merryweather Optical Co.*, 240 NLRB 1213, 1216 fn. 7 (1979). In addition, the Respondent shall reimburse unit employees for any expenses ensuing from its failure to make the required contributions, as set forth in *Kraft Plumbing & Heating*, 252 NLRB 891 fn. 2 (1980), enfd. 661 F.2d 940 (9th Cir. 1981), such amounts to be computed in the manner set forth in *Ogle Protection Service*, 183 NLRB 682 (1970), enfd. 444 F.2d 502 (6th Cir. 1971), with interest as prescribed in *New Horizons for the Retarded*, 283 NLRB 1173 (1987).² Furthermore, having found that the Respondent violated Section 8(a)(5) and (1) by failing to remit to the Union dues and fees for the months of January through June 1994 that were deducted from the pay of unit employees pursuant to valid dues-checkoff authorizations, we shall order the Respondent to remit such withheld dues to the Union as required by the agreement, with interest as prescribed in *New Horizons for the Retarded*, supra. Finally, having found that the Respondent violated Section 8(a)(5) and (1) by unilaterally failing and refusing to pay employee wages, pursuant to the collective-bargaining agreement for the period May 31 through June 1, 1994, we shall order the Respondent to make the unit employees whole for any loss of earnings attributable to its un-

²To the extent that an employee has made personal contributions to a fund that are accepted by the fund in lieu of the employer's delinquent contributions during the period of the delinquency, the respondent will reimburse the employee, but the amount of such reimbursement will constitute a setoff to the amount that the respondent otherwise owes the fund.

lawful conduct. Backpay shall be computed in accordance with *Ogle Protective Service*, supra, with interest as prescribed in *New Horizons for the Retarded*, supra.

ORDER

The National Labor Relations Board orders that the Respondent, A-1 Roofing Company, Honolulu, Hawaii, its officers, agents, successors, and assigns, shall

1. Cease and desist from

(a) Failing and refusing to make contractually required contributions to the health and welfare fund, the pension fund, the annuity fund, the vacation and holiday fund, the vacation and holiday administration account, and the joint apprenticeship and training fund.

(b) Failing and refusing to remit union dues and fees that have been deducted from wages pursuant to receipt of proper authorization from employees.

(c) Failing and refusing to remit the contractually required payment for the 10-percent liquidated damages that it owes for its delinquent trust fund contributions.

(d) Failing and refusing to pay employee wages, pursuant to the collective-bargaining agreement, subsection 9 (Wage Rates), 10 (Pay Day), 11 (Hours and Overtime), and 12 (Showup Pay and/or Work).

(e) In any like or related manner interfering with, restraining, or coercing employees in the exercise of the rights guaranteed them by Section 7 of the Act.

2. Take the following affirmative action necessary to effectuate the policies of the Act.

(a) Comply with the terms and conditions of the collective-bargaining agreement by making all contractually required benefit-fund contributions and payments for liquidated damages that have not been made for the months of January through June 1994, and make whole the unit employees for any expenses resulting from its failure to do so, as set forth in the remedy section of this decision.

(b) Remit to the Union, with interest, the dues and fees for the months of January through June 1994, that were deducted from the pay of unit employees pursuant to valid dues-checkoff authorizations, as required by the collective-bargaining agreement.

(c) Make the unit employees whole for any loss of earnings resulting from its failure and refusal to pay employee wages, pursuant to the collective-bargaining agreement, subsection 9 (Wage Rates), 10 (Pay Day), 11 (Hours and Overtime), and 12 (Showup Pay and/or Work), for the period May 31 through June 1, 1994, as set forth in the remedy section of this decision.

(d) Preserve and, on request, make available to the Board or its agents for examination and copying, all payroll records, social security payment records, timecards, personnel records and reports, and all other records necessary to analyze the amount of backpay due under the terms of this Order.

(e) Post at its facility in Honolulu, Hawaii, copies of the attached notice marked "Appendix."³ Copies of the notice, on forms provided by the Regional Director for Region 20, after being signed by the Respondent's authorized representative, shall be posted by the Respondent immediately upon receipt and maintained for 60 consecutive days in conspicuous places including all places where notices to employees are customarily posted. Reasonable steps shall be taken by the Respondent to ensure that the notices are not altered, defaced or covered by any other material.

(f) Notify the Regional Director in writing within 20 days from the date of this Order what steps the Respondent has taken to comply.

Dated, Washington, D.C. January 27, 1995

William B. Gould IV, Chairman

James M. Stephens, Member

Charles I. Cohen, Member

(SEAL) NATIONAL LABOR RELATIONS BOARD

APPENDIX

NOTICE TO EMPLOYEES
POSTED BY ORDER OF THE
NATIONAL LABOR RELATIONS BOARD
An Agency of the United States Government

The National Labor Relations Board has found that we violated the National Labor Relations Act and has ordered us to post and abide by this notice.

WE WILL NOT fail or refuse to make contractually required contributions to the health and welfare fund, the pension fund, the annuity fund, the vacation and holiday fund, the vacation and holiday administration account, and the joint apprenticeship and training fund.

WE WILL NOT fail or refuse to remit union dues and fees that were deducted from the pay of unit employees pursuant to valid dues-checkoff authorizations, as required by the collective-bargaining agreement.

WE WILL NOT fail or refuse to remit the contractually required payment for the 10-percent liquidated damages that we owe for our delinquent trust fund contributions.

³ If this Order is enforced by a judgment of a United States court of appeals, the words in the notice reading "Posted by Order of the National Labor Relations Board" shall read "Posted Pursuant to a Judgment of the United States Court of Appeals Enforcing an Order of the National Labor Relations Board."

WE WILL NOT fail or refuse to pay employee wages, pursuant to the collective-bargaining agreement, subsection 9 (Wage Rates), 10 (Pay Day), 11 (Hours and Overtime), and 12 (Showup Pay and/or Work).

WE WILL NOT in any like or related manner interfere with, restrain, or coerce you in the exercise of the rights guaranteed you by Section 7 of the Act.

WE WILL comply with the terms and conditions of the collective-bargaining agreement by making all contractually required benefit-fund contributions and payments for liquidated damages that have not been made for the months of January through June 1994, and WE WILL make whole the unit employees for any expenses resulting from our failure to do so.

WE WILL remit to the Union, with interest, the dues and fees for the months of January through June 1994, that were deducted from the pay of unit employees pursuant to valid dues-checkoff authorizations, as required by the collective-bargaining agreement.

WE WILL make our unit employees whole for any loss of earnings resulting from our failure and refusal to pay employee wages, pursuant to the collective-bargaining agreement, subsection 9 (Wage Rates), 10 (Pay Day), 11 (Hours and Overtime), and 12 (Showup Pay and/or Work), for the period May 31 through June 1, 1994.

A-1 ROOFING COMPANY, INC.